



4334-63

DEPARTMENT OF THE INTERIOR

Office of the Secretary

48 CFR Part 1419

[190D0102DM DS62500000 DLSN00000.000000 DX62501] **[DOI-2018-0018]**

RIN 1090-AB22

Acquisition Regulation: Removal of Outdated References

AGENCY: Office of Small and Disadvantaged Business Utilization, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Interior is issuing a proposed rule amending the Department of the Interior Acquisition Regulation (DIAR) to implement Section 15(k) of the Small Business Act and remove outdated references and/or obsolete information.

DATES: Comments must be received on or before [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: You may submit comments on the rulemaking on Docket Number DOI-2018-0018 through the Federal eRulemaking Portal at <https://www.regulations.gov>.

Please use Regulation Identifier Number (RIN) 1090-AB22 in your message. Follow the instructions on the web site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Bell, Procurement Analyst, Office of Small and Disadvantaged Small Business, Department of the Interior, 1849 C Street NW., Mail Stop 4262 MIB, Washington, DC 20240; telephone (202)-208-3458 or email christopher_bell@ios.doi.gov.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule will revise the Department of the Interior Acquisition Regulation (DIAR) in order to update references to other Federal and Departmental directives, remove obsolete material and remove obsolete references.

On November 24th, 2015, the DOI Office of Acquisition and Property Management (PAM) issued a class deviation to DIAR 1419.2, to revise the content in 1419.201 and 1419.202. This proposed rule intends to update the DIAR with changes from the deviation and rescind the class deviation.

The content of DIAR 1419.201 related to setting goals for small business contracting, the role of the Office of Small and Disadvantaged Business Utilization (OSDBU) and the appointment of Small Business Specialists and was out of date and inconsistent with statutory requirements and the Federal Acquisition Regulation (FAR). The deviation ensured that DOI manages our small business goals in full compliance with SBA's procedures and adhered to FAR requirements regarding the role of the OSDBU and Small Business Specialists. This proposed rule ensures that the role of the Director of the OSDBU is consistent with the Small Business Act 15 U.S.C. 644(k).

The proposed rule simplifies DIAR 1419.202 to allow the OSDBU Director responsibility for issuing policy on the use and content of the Form DI-1886 "Acquisition Screening and Review Form".

The proposed rule further intends to remove the following from DIAR 1419:

Remove DIAR 1419.505, "Rejecting Small Business Administration recommendations." The Department has determined that the procedures in FAR 19.505 are sufficient for documenting the rejection of Small Business Administration's

recommendation and that further supplemental guidance in the DIAR is duplicative and redundant;

Remove DIAR 1419.506, “Withdrawing or modifying small business set-asides.”

The Department has determined that the procedures in FAR 19.506 are sufficient for withdrawing or modifying small business set-asides and that further supplemental guidance in the DIAR is duplicative and redundant;

Remove DIAR 1419.7, “The Small Business Subcontracting Program”, in its entirety. The DOI has determined that the procedures in FAR 19.7 are sufficient for managing the DOI’s small business subcontracting program;

Remove DIAR 1419.803, Selecting acquisitions for the 8(a) program;

Remove DIAR 1419.9, “Contracting Opportunities for Women-Owned Small Businesses”, in its entirety. The Executive Order 12138 supporting the regulation has been superseded by the Women Owned Small Business program established under 15 U.S.C 637(m);

Remove DIAR 1419.10, “Small Business Competitiveness Demonstration Program”, in its entirety. FAR 19.10 was established to meet the requirements of the Business Opportunity Development Reform Act of 1988 (Pub. L. 100-656). Section 1335 of the Small Business Jobs Act of 2010 (Pub. L. 111-240) amended the Business Opportunity Development Reform Act of 1988 and repealed the Small Business Competitiveness Demonstration Program.

II Required Determinations

1. *Regulatory Planning and Review (Executive Orders 12866 and 13563).*

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public, where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

2. *Regulatory Flexibility Act.* The Secretary certifies that the adoption of this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, under 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

3. *Small Business Regulatory Enforcement Fairness Act.* This proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This proposed rule does not have an annual effect on the economy of \$100 million or more. This proposed rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or

geographic regions. This proposed rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. *Unfunded Mandates Reform Act*. This proposed rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector nor does the rule impose requirements on State, local, or tribal governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

5. *Takings (E.O. 12630)*. This proposed rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

6. *Federalism (E.O. 13132)*. Under the criteria in section 1 of E.O. 13132, this proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. It would not substantially and directly affect the relationship between the Federal and state governments. A Federalism summary impact statement is not required.

7. *Civil Justice Reform (E.O. 12988)*. This proposed rule complies with the requirements of E.O. 12988. Specifically, this rule (1) meets the criteria of section 3(a) of this E.O. requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (2) meets the criteria of section 3(b)(2) of this E.O. requiring that all regulations be written in clear language and contain clear legal standards.

8. *Consultation with Indian tribes (E.O. 13175).* The Department strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined that it has no substantial direct effect on Federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required. This rule does not apply to tribal awards made in accordance with the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, 88 Stat. 2204), as amended.

9. *Paperwork Reduction Act, 44 U.S.C. 3501, et seq.* This proposed rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act (PRA) is not required.

10. *National Environmental Policy Act.* This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by the categorical exclusion listed in 43 CFR 46.210(c). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

11. *Effects on the Energy Supply (E.O. 13211)* This proposed rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

12. *Clarity of this Regulation.* We are required by Executive Orders 12866 (section 1(b)(12)), and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and the Presidential

Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must (1) be logically organized; (2) use the active voice to address readers directly; (3) use common, everyday words and clear language rather than jargon; (4) be divided into short sections and sentences; and (5) use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the “FOR FURTHER INFORMATION CONTACT” section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the number of section or paragraphs that you find unclear, which section or sentences are too long, the sections where you feel lists or tables would be useful, etc.

13. *Public availability of comments.* Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment - including your personal identifying information - may be publically available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 48 CFR Part 1419

Government procurement, Small business

For the reasons set out in the preamble, DOI proposes to revise 48 CFR, chapter 7, part 1419 to read as follows:

PART 1419 - SMALL BUSINESS PROGRAMS

Sec

Subpart 1419.1 [Reserved]

Subpart 1419.2 Policies

1419.201 General Policy

1419.202 Specific policies

Subpart 1419.3 [Reserved]

Subpart 1419.4 [Reserved]

Subpart 1419.5 Set-Asides for Small Business

1419.503 Setting aside a class of acquisitions.

1419.503-70 Class set-aside for construction acquisitions.

Subpart 1419.6 Certificates of Competency and Determinations of Responsibility

1419.602 Procedures.

1419.602-1 Referral.

Subpart 1419.7 [Reserved]

Subpart 1419.8 Contracting with the Small Business Administration (The 8(a) Program)

1419.803 [Reserved]

1419.810 SBA appeals.

Subpart 1419.9 [Reserved]

Subpart 1419.10 [Reserved]

Authority: Sec. 205(c); 63 Stat. 390; 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1419.1 [Reserved]

Subpart 1419.2 Policies

1419.201 General Policy

The Director of the Office of Small Disadvantaged Business Utilization (OSDBU) is responsible for the following;

- (a) Developing and maintaining policies, procedures, regulations, and guidelines for the effective administration of the Department's small business and disadvantaged business programs;
- (b) The appointment of Small Business Specialists to ensure compliance with all applicable law, regulation, and policy; and
- (c) The negotiation of annual small business and subcontracting goals with the Small Business Administration (SBA). The purpose of these goals is to increase participation of small business and disadvantaged small businesses in contract and subcontract opportunities.

1419.202 Specific policies

1419.202-70 Acquisition screening and Small Business Specialist recommendations.

The Director of the OSDBU is responsible for issuing policy for use of the DI Form 1886 and determining the content of Form DI-1886 "Acquisition Screening and Review Form."

Subpart 1419.3 [Reserved]

Subpart 1419.4 [Reserved]

Subpart 1419.5 Set-Asides for Small Business

1419.503 Setting aside a class of acquisitions.

1419.503-70 Class set-aside for construction acquisitions.

(a) Acquisitions for construction (as defined in FAR 2.101) estimated to cost \$2 million or less must be set-aside on a class basis for exclusive participation by small business or disadvantaged business concerns. This class set-aside does not apply when:

- (1) The acquisition is procured using simplified acquisition procedures;
- (2) A non-competitive acquisition has been approved under the procedures of FAR 6.3;
- (3) Work is to be performed outside the U.S.; or
- (4) The Bureau Procurement Chief determines that adequate competition is not likely to be obtained if the acquisition is restricted to small business concerns.

(b) [Reserved].

Subpart 1419.6 Certificates of Competency and Determinations of Responsibility

1419.602 Procedures.

1419.602-1 Referral.

The contracting officer must obtain approval from the Chief of the Contracting Office for all determinations documenting a responsive small business' lack of responsibility prior to submission to the appropriate SBA office. A copy of the determination must be sent to OSDBU within 5 working days of the approval date of the determination.

Subpart 1419.7 [Reserved]

Subpart 1419.8 Contracting with the Small Business Administration (The 8(a) Program)

1419.803 [Reserved]

1419.810 SBA appeals.

Assistant Secretary of Policy Management and Budget, without the power of redelegation, is authorized to issue the decision on an SBA appeal of a Contracting Officer's Section 8(a) decision.

Subpart 1419.9 [Reserved]

Subpart 1419.10 [Reserved]

Susan Combs,
Senior Advisor to the Secretary,
Exercising the Authority of the Assistant Secretary for
Policy, Management and Budget

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